IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 9.1.2007

Ram Sarup and others

...Appellants

versus

State of Haryana

... Respondent

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice A.N.Jindal.

Present: Mr.Vinod Ghai, Advocate with
Mr.P.C.Chaudhary, Advocate
for the appellants.
Mrs.Ritu Punj, DAG, Haryana.

UMA NATH SINGH, J.

This Crl. Appeal arises out of a judgment and order dated 20.2.1997 passed by learned Addl. Sessions Judge, Kaithal, in Sessions Case No.40 of 1995 (Sessions Trial No. 98 of 1995), holding the accused-appellants guilty of offences under sections 302/34 IPC and Sections 323/34 IPC, and awarding rigorous imprisonment for life with a fine of Rs. 2,000/- each, in default thereof, to undergo six months' RI on the first count, and three months' RI on the second count, with a direction that both the sentences shall run concurrently.

During the course of hearing, learned counsel for the appellants informed that accused-appellant Ram Sarup has died. Hence, this appeal has abated in his case.

On 6.2.1995, Satywan (PW.7) son of deceased Kehar Singh, gave a statement (Ex.PF/1) to SI Swaran Singh (PW9) to the effect that the deceased and his step brother accused appellant Ram Sarup (since dead) had some dispute over partition of a house/land on several occasions. Even 2/3

days prior to the date of incident, they had indulged in an altercation but later on, with the intervention of co-villagers, the matter was compromised. Further as per the statement, on the date of incident, i.e., 6.2.1995 at about 7.30/8.00 PM, the deceased being accompanied by his son Krishan (PW8) was going to his bara (an open place where cattle and agricultural implements etc. are kept), to tether the cows. When they reached the bara, accused appellants Hukmi and Joginder Singh being accompanied by their father co-accused appellant Ram Sarup (since dead) were found present. Accused Hukmi was armed with a dabb (a sharp edged cutting instrument), while accused Ram Sarup and Joginder Singh were wielding lathis. At that moment, accused Ram Sarup raised a lalkara exhorting that the enemy, who has harassed them, has come and he be finished. Pursuant thereto, accused Joginder Singh is alleged to have held the deceased from behind, whereas co-accused Hukmi gave a dabb blow on his head, as a result whereof, he fell on the ground. Satywan (PW7), the author of the FIR, and his brother Krishan (PW8) moved ahead to save their father but accused Ram Sarup gave a lathi blow on the right knee of Krishan (PW8). Co-accused Hukmi caused two dabb blows, hitting Satywan on his left eye brow and left knee. Accused Joginder also gave a lathi blow on his back. They raised an alarm, which attracted his neighbourers Nanha and Bhira and hence, the accused fled away with their weapons. The deceased was found to have succumbed to the injuries. Satywan (PW7), leaving his brother Krishan (PW8) and other family members near the body of the deceased, started for the Police Station to lodge a report but at the Bus Stand Rajound, he met SI Swaran Singh. He made the statement (Ex.PF/1) to the SI, who, after recording it, sent to the Police Station for registration of a formal FIR. Accordingly, an

FIR under Sections 302/34 IPC was recorded. The body was sent for postmortem examination and thereafter, Satywan (PW7) and Krishan (PW8) were also got medico legally examined. The weapons of offence were recovered after the accused were arrested and on completion of the investigation, a challan was put up, and the accused were tried upon the charges under Sections 302/323/34 IPC.

The prosecution examined as many as nine witnesses, whereas the defence produced none. Suresh Chand Sharma (PW1) is a Draftsman, who prepared the site plan (Ex.PA). Dr.Lajja Ram (PW2), Medical Officer of PHC Rajaound, medico legally examined Satywan (PW7) and Krishan (PW8) on 7.2.1995, and submitted his reports (Exs.PB and PC), with seat of injuries (Exs.PB/1 and PC/1). HC Karam Singh (PW3) took the dead body for postmortem examination. HC Jaipal Singh (PW4) carried the special report to the Illaqa Magistrate. ASI Balwan Singh (PW5) recorded a formal FIR (Ex.PF). Dr.S.K.Singal (PW6) conducted the postmortem examination on the dead body on 7.2.1995 at 10.45 AM and submitted his report (Ex.PH). Satywan (PW7), son of the deceased, is an injured eye witness and is also the complainant. Krishan (PW8), the another son of the deceased, is also an injured eye witness. SI Swaran Singh (PW9) is the SHO and the Investigating Officer. He prepared the inquest of the dead body vide Ex.PH/2 and a rough site plan of the scene of occurrence vide Ex.PK. The blood stained earth was seized vide Ex.PJ. On the disclosure statement of accused Ram Sarup vide Ex.PL, a lathi was recovered, as per Ex.PL/1. Similarly, on the disclosure statement of Hukmi vide Ex.PM, a dabb was recovered as per Ex.PM/2. Another co-accused Joginder Singh also gave his disclosure statement (Ex.PN) and a lathi was recovered vide

Ex.PN/1. Vide Ex.PO, the FSL submitted its report (Ex.PO/1), showing that the blood stains on dabb (a sharp edged weapon) and the earth collected during investigation had disintegrated, whereas on the clothes of the deceased, the presence of human blood was found.

Vide the statements of the accused under Section 313 Cr.P.C., all the three accused have pleaded innocence, stating that deceased Kehar Singh was not assaulted by them. Rather, he fell on the harrow of tractor belonging to one Hari Singh and received the injuries, causing his death.

We have heard learned counsel for the parties and perused the records. Learned counsel for the appellants has assailed the impugned judgment on the ground that there was a delay in the recording of the FIR, so also in sending the special report to the Illaqa Magistrate. According to him, the deceased succumbed to the injuries on the spot itself at about 7.30/8.00 PM, whereas the statement of PW7 was recorded at 10.30 PM, although he had left the scene of occurrence soon after the incident and the distance between the Bus Stand Rajound and the spot of incident was just 3-4 kms. The FIR was lodged with delay at 10.45 PM. Hence, it was lodged after due deliberation to implicate all the male members of the family. According to learned counsel, this is the precise reason that the dispatch of special report was also delayed. It was delivered by PW4 only at 4.30 A.M. the next day. Similarly, the doctors also received the police papers with delay. The second submission of learned counsel is that the alleged motive appears to be too weak to have led to causing the death of the deceased. The total area of the disputed land was just 5-7 yards and the matter had already been compromised between the parties. The prosecution did not produce any evidence regarding the alleged partition, causing

dispute between the parties. Besides, learned counsel has also assailed the presence of the eye witnesses. According to him, there was no occasion for the eye witnesses (PW7 and PW8) to have accompanied their deceased father when he was only taking cows to the bara. Further, the moment accused Ram Sarup raised the lalkara to attack the deceased, and accused Joginder Singh had held him, the eye witnesses should have rushed to save their father. Their conduct rather appeared to be unnatural. They have also changed their versions as regards the seat of injuries. In the FIR, they have attributed one injury caused on the head of the deceased, whereas in the Court statements, they have stated one injury on the head and another on the shoulder. Further, according to learned counsel, there is no satisfactory explanation as to why the medico legal examination of the eye witnesses was delayed to the next day. According to learned counsel, rigor mortis was fading away at the time of postmortem examination and thus, the incident had not taken place at the time, as indicated in the FIR. He also submitted that independent witnesses, Bhira and Nanha, who rushed to the spot on hearing the alarm, have not been examined. Similarly, witnesses of recovery, namely, Kidara and Murki, were also not produced in the witness box.

On the other hand, learned State counsel supported the impugned judgment and justified the delay in lodgment of the FIR and dispatch of the special report by referring to discussions in the impugned judgment. Learned counsel further submitted that the alleged independent witnesses were left out on the pretext of being won over by the defence.

We have carefully considered the rival submissions and examined the evidence as referred to during arguments. The prosecution

case is based on eye witnesses' accounts of injured witnesses. Their presence with their deceased father appears to be probable for the reason that Satywan (PW7) was aged about 22 years and Krishan (PW8) was of 20 years. They belonged to labour class and it has not come in the evidence that they were living separately. Their deceased father was aged about 65 years and therefore, they could have accompanied him in taking the cattle to the bara for tethering. Further, it is not evident from the records that they were also carrying any weapon and, thus, in the presence of the accused, who were duly armed with deadly weapons, the eye witnesses could not have risked their lives. Only on that count, their testimonies cannot be disbelieved (See: AIR 1997 SC 318 (State of Madhya Pradesh vs. Dhirendra Kumar). Moreover, the statements of the eye witnesses indicated that they moved ahead to save their deceased father and in the process, also suffered injuries. Vide MLRs of the injured witnesses, being Exts, PB & PC, the following injuries were found on their bodies:-

Satywan (PW7)

"1. An abrasion 2 cms over right lateral angle of left eye brow. Vertical in nature. Red in colour.

2. Abrasion of size 1 cm over the lateral aspect of left arm, at 1/3rd of upper and reddish in nature. Diffuse swelling around the abrasion.

3. An abrasion 1 cm over right scapular region. Reddish in colour."

Krishan (PW8)

"1. Diffused swelling over the right knee joint. Warm on touching, tenderness, restricting movements of right knee joint. X-ray was advised for

right knee joint."

Hence, we find no reasons to disbelieve the eye-witnesses. The complainant (PW7) had gone to Police Station in a tractor of one Hari Singh and not in his own vehicle. Further, the defence has not put any question about delay to the eye-witnesses. As regards the special report, HC Jaipal Singh (PW4) was given the report at 11.00 PM in the night, and since no vehicle was readily available, it took him some time to deliver the report at the place of the Illaqa Magistrate at 4.30 AM. Thus, there is sufficient explanation for alleged delay in the delivery of the special report. There was a strong motive between the parties as is evident from the testimonies of the eye witnesses that accused Ram Sarup and deceased Kehar Singh were step brothers, having dispute over a piece of land. They had entered into altercations on several occasions, including the one that took place just 3 days before the date of occurrence. Moreover, the substantive evidences of the injured eye witnesses, PW7 and PW8, and also the FIR (Ex.PF), fully corroborate the prosecution case, leaving no scope for any interference. It has also come in the evidence of the eye witnesses that though the incident took place in the evening at about 7.30/8.00 PM, but there was sufficient electric light at that time. The accused, being the cousins of the complainant, were not strangers for them. That apart, the medical evidence being the postmortem report, and also as contained in the inquest (Ex.PH/2), prepared by SI Swaran Singh (PW9), also lend corroboration to the prosecution case. The details of the injuries sustained by the deceased as detailed in the postmortem report are as under:-

> "(i) Incised wound 8 cms x 1 cm bone deep on the top of vertex of head present obliquely crossing the midline region.

Posterior and over the left parietal region and interior and over the right parietal region. Wound was clean cut, deeper in the middle and tapering at both ends. On exploration both the parietal bones were fractured. Fracture line was about 10 cms long. Meaninges were cut. There was a big extra dural haematoma as well as sub dural haematoma extending on both sides. Brain matter was also cut under neath the wound in middle. Brain matter was depressed under neath the haematoma.

(ii) Incised wound 4x5 cms into muscle deep on the outer part of right stapular area of shoulder. Wound was obliquely placed anterior and was towards neck. There was cut in the coat, both shirts corresponding to wound."

That apart, vide Exts. PM, PN and PO, the accused persons have given their disclosure statements, which have led to the recovery of two lathis and a dabb. The statement of the Investigating Officer Swaran Singh (PW9) being in tune with the testimonies of PW7 and PW8 also strengthen the prosecution case.

Thus, in view of the aforesaid discussions, we are not inclined to accept the appeal and hence, the impugned judgment and order as aforesaid is hereby affirmed. Consequently, the appeal stands dismissed. The CJM concerned shall take the accused in custody forthwith.

(UMA NATH SINGH)
JUDGE

9.1.2007
pk

(A.N.JINDAL)
JUDGE